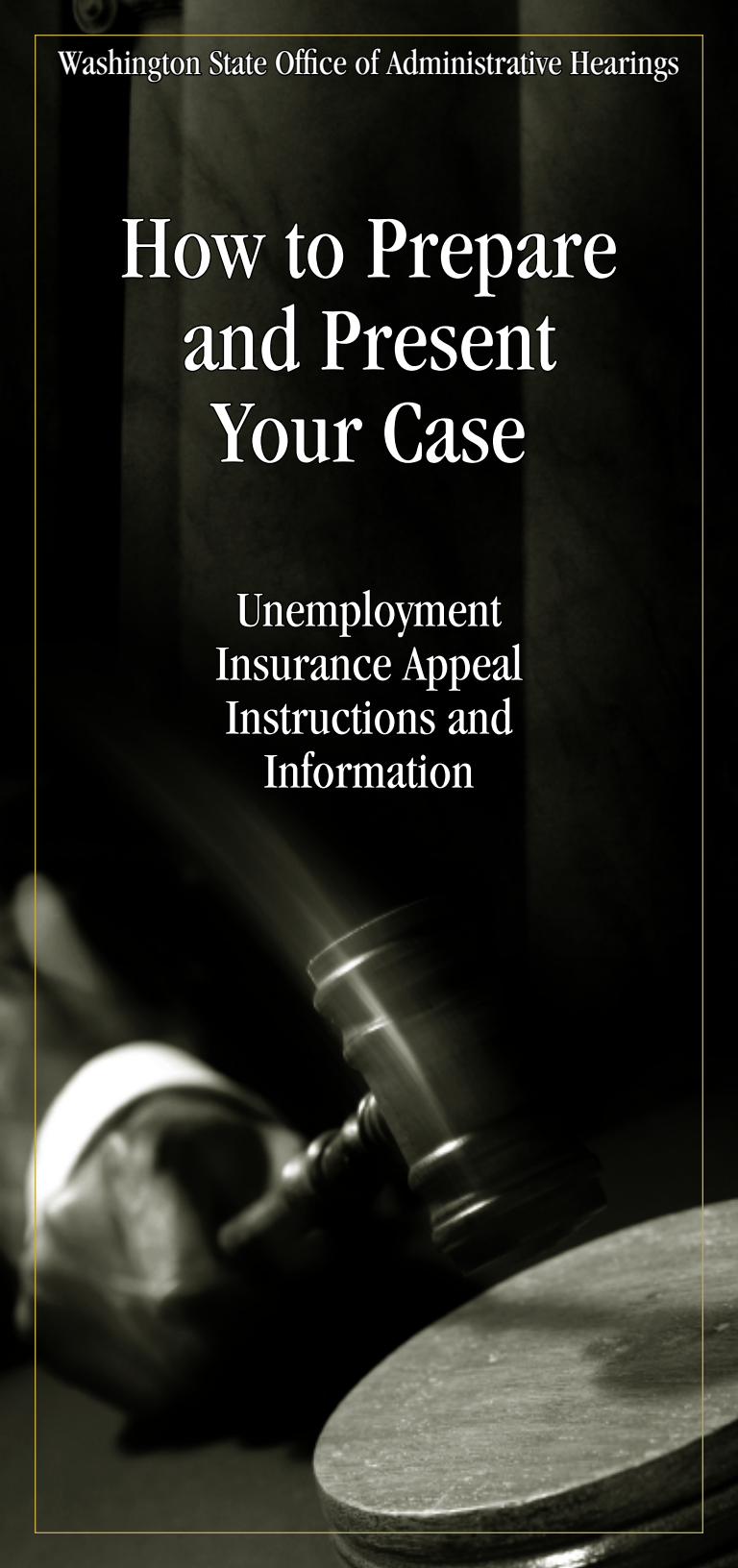


Washington State Office of Administrative Hearings

How to Prepare and Present Your Case

Unemployment
Insurance Appeal
Instructions and
Information



YOUR UNEMPLOYMENT INSURANCE APPEAL:

How to Prepare and Present Your Case

This pamphlet contains important instructions and information about your hearing before the Office of Administrative Hearings (OAH). It will answer many of your questions about how to prepare for the hearing.

CONTENTS

	<u>Page</u>
• What is a hearing?	2
• What happens at a hearing?	2
• How will I know when my hearing is scheduled?	3
• What if my address changes before the hearing?	3
• What must be proved at a hearing?	3
• How do I get a witness or subpoena?	5
• Do I need other evidence?	5
• May I look at the hearings file before the hearing?	6
• What is a telephone hearing?	6
• What if I have special needs?	7
• Do I need an interpreter?	7
• Do I need a lawyer?	8
• What if I don't participate in the hearing?	8
• What if I change my mind about wanting a hearing?	9
• Can I get a new date for a hearing?	9
• When will I get a decision?	9
• What tips can help me in the hearing?	9
• Where do I call if I have questions?	10
• What if I want more hearings information?	10
• What if I disagree with the hearing decision?	11
• What does the Commissioner's Review Office do?	11
• Request for Interpreter form	13
• Notice of Nondiscrimination	14

WHAT IS A HEARING?

Your appeal is filed with an independent state agency -- the Office of Administrative Hearings (OAH). OAH hears appeals from decisions by state agencies. OAH will assign an impartial administrative law judge (ALJ), who is an attorney, to hear your case.

A hearing is a fact-finding process. Usually the purpose of the hearing is to decide whether unemployment benefits should be paid. In a hearing, the people involved in the matter--usually the claimant, the employer, witnesses, and sometimes a representative or witness from the Washington State Employment Security Department -- give information about the case. Most of the information is given by testimony. All testimony is taken under oath. The ALJ gathers the facts of the case, issues a written decision, and ensures that all parties get a fair hearing.

Although parties have a right to appeal the ALJ's decision, the hearing is the only chance the parties will have to present their evidence and to explain their side of the story. If you want your point of view to be considered, you must appear at the hearing.

WHAT HAPPENS AT A HEARING?

The hearings are tape recorded. All testimony is under oath. The ALJ starts the hearing by explaining what issues will be addressed and what will happen during the hearing. The ALJ will swear in all witnesses, then identify and admit or exclude exhibits and rule on any objections raised.

Each party has an opportunity to present testimony, ask questions of witnesses, and respond to the witness testimony given. A typical hearing lasts one hour, but can be longer or shorter depending on the issues involved and the number of witnesses and documents presented.

You will be given a chance to offer written evidence such as timecards, records, medical statements, etc. Each party is expected to have his or her evidence and witnesses available at the time of the hearing.

Information you provide may be subject to the Public Records Act.

IMPORTANT: If you have written evidence you want to use in the hearing, you must provide it to the other party or parties and the ALJ before the hearing. Their names and addresses are shown on the Notice of Hearing.

If you fail to provide copies of your written evidence before the hearing, the ALJ may decide not to consider your evidence, or may “continue” the hearing so that all parties have a chance to review the evidence.

After all the evidence has been presented, the ALJ will close the hearing. The ALJ will not announce a decision at the hearing, but will mail a written decision to the parties.

HOW WILL I KNOW WHEN MY HEARING IS SCHEDULED?

Not less than seven days before the hearing, a **Notice of Hearing** will be mailed to you. The notice will tell you if the hearing is in person or by telephone. The notice will give the name of the ALJ, the date and time of the hearing, and if in person, the place of the hearing. The notice will also tell you the issues the ALJ will decide.

WHAT IF MY ADDRESS CHANGES BEFORE THE HEARING?

If your address changes or needs correction before the hearing, or before you receive the ALJ’s decision, contact the OAH office listed on your **Notice of Hearing**.

WHAT MUST BE PROVED AT A HEARING?

Discharge

A claimant who is discharged for misconduct is ineligible for unemployment benefits. The employer has the burden of proving the claimant was discharged or suspended for misconduct related to his or her work.

Misconduct means an employee’s act or failure to act in willful disregard of his or her employer’s interest, where the effect of the employee’s act or failure to act is harmful to the employer’s business.

The employer should be prepared to present information about how and when the claimant violated the employer's standards of behavior or disregarded its interests, and how the employer was harmed by the claimant.

In response, the claimant should be prepared to explain why he or she did not intentionally act in disregard of the employer's interest, and did not harm the employer.

Voluntary Quit

A claimant who quits work voluntarily with *good cause* is eligible for unemployment benefits. The claimant has the burden of proving that he or she had *good cause* to quit.

Generally speaking, to show *good cause*, the claimant must show that (1) he or she left work primarily because of a work-connected factor; (2) the work factor was so compelling as to cause a reasonably prudent person to quit work; and (3) prior to quitting, he or she first exhausted reasonable alternatives which might preserve employment, unless it would have been futile to do so.

A claimant who quits work based on a medical condition, or the medical condition of someone in the immediate family, or has quit work to accept a bona fide job offer, or because his or her spouse has been transferred to a job in another area, may have quit work with *good cause*.

The claimant should be prepared to provide details about what caused him or her to quit. In response, the employer may respond by showing that the working conditions were not so compelling as to cause a reasonably prudent person to quit, or that the claimant had reasonable alternatives to quitting.

Job Search/Availability

No matter what the issues, claimants who are required by the Department to register for work must prove that while applying for unemployment benefits, they have been able, available and actively seeking work. Claimants should be prepared to report on their *job search contacts and in-person job search activities*, such as workshops, training classes, and computer training.

The ALJ may ask to see a copy of the claimant's *job search and activities log*.

Your legal issue is shown on your Notice of Hearing under the section “PURPOSE OF HEARING”. If your case does not involve a discharge or voluntary quit as discussed above, the ALJ will explain what you must prove at the hearing.

HOW DO I GET A WITNESS OR SUBPOENA?

Do not assume that any witness with information about your case will be at the hearing. It is your responsibility to make arrangements for their participation. Before you ask witnesses to appear at the hearing, talk to them first. Generally, you should choose witnesses who have first-hand knowledge of the facts of your case.

If a witness will simply repeat what others will say, or knows little about your case, the ALJ might not allow the witness to testify.

If you decide you need witnesses to help explain your case, contact them as soon as possible. Be sure they are available at the time set for the hearing. If you are appearing in person, your witnesses may appear by telephone.

If a witness is unwilling to appear at the hearing, but you believe his or her testimony is necessary, contact the OAH office on your notice to request a subpoena. A subpoena is an order for the witness to appear at the hearing, either in-person or by telephone.

Be prepared to explain why you believe the witness is necessary, and to provide the witness’s name and address. The OAH will then decide whether to grant your subpoena request.

Since it takes time to process and serve a subpoena, you should make the request as soon as possible.

DO I NEED OTHER EVIDENCE?

You may need written evidence to present your case. Written evidence may include correspondence, timecards, medical reports, etc. You may also use photos, maps, charts, etc., if they help explain the facts of your case.

Make sure that you are able to explain who prepared the written evidence, its purpose, and how it helps your case.

If you need records that are not available to you, you may contact the OAH office on your notice to request a subpoena ordering a party to bring documents to the hearing. Be prepared to explain why you believe the documents are necessary to your case. You must be able to identify the documents and who has them.

The OAH will then decide whether to grant your subpoena request. Since it takes time to process and serve a subpoena, you should make the request as soon as possible.

You may choose to submit written statements or letters from witnesses if a witness is not easily available. But the ALJ may find written statements or letters less persuasive than first-hand testimony.

IMPORTANT: If you have written evidence you want to use in the hearing, you must provide it to the other party or parties and the ALJ before the hearing. Their names and addresses are shown on the Notice of Hearing.

If you fail to provide copies of your written evidence before the hearing, the ALJ may decide not to consider your evidence, or may “continue” the hearing so that all parties have a chance to review the evidence.

MAY I LOOK AT THE HEARINGS FILE BEFORE THE HEARING?

Parties may review the OAH file before the hearings. Contact the OAH office on your **Notice of Hearing**.

WHAT IS A TELEPHONE HEARING?

Many hearings are held by telephone. A conference call allows you to hear everything the participants say, and allows them to hear you.

If your hearing is scheduled by phone, you will be mailed numbered copies of documents. Some or all of these may become exhibits in the official hearing file. If your hearing is postponed, you will not be mailed new copies when your hearing is rescheduled. Keep them in a safe place.

Even if you are scheduled for an in-person hearing, you may request one by telephone. Contact OAH to explain why you would like to participate by telephone. OAH will either grant or deny your request.

If you object to a telephone hearing, contact OAH office on your **Notice of Hearing to request an in-person hearing**. After considering your reasons, OAH will either grant or deny your request.

If you have witnesses, they can be called at the telephone number most convenient for them. The ALJ can call each witness when needed, and then connect him or her to the conference call so that the parties can ask questions of the witness.

Be sure to tell the ALJ at the start of the hearing if you have witnesses who need to be called.

Do not call from a cellular or pay phone. Telephones are available for your use at your local Work Source Center. If you do not have a telephone and cannot arrange to use a phone, contact the OAH office on your **Notice of Hearing**, and we will arrange for your participation.

If you must use a pay phone, alert OAH that you are using one when you call in to start your hearing.

If there is a call blocking feature on the telephone you intend to use for the hearing, it must be disabled prior to the hearing, or the ALJ will be unable to contact you for the hearing.

WHAT IF I HAVE SPECIAL NEEDS?

Contact the OAH office on your **Notice of Hearing** immediately so that arrangements can be made if you have special needs which must be accommodated for you to participate in a hearing.

DO I NEED AN INTERPRETER?

Hearings are conducted in English. Decisions are issued in English. If your knowledge of English is limited, or if you are hearing or speech impaired, or if you are reading this for a person whose knowledge of English

is limited, contact the OAH office on your **Notice of Hearing** immediately to request an interpreter. An interpreter request form can be found at the end of this booklet. There is no charge to you for this service.

DO I NEED A LAWYER?

You may choose to have a lawyer or other representative help you with the hearing. The state cannot pay for your attorney or representative. Contact the OAH office on your **Notice of Hearing** for a list of legal services that may be available to you.

The **Notice of Hearing** may list the name and address of a party's representative or attorney, if the OAH has been notified. Sometimes, a party will show up at the hearing with an attorney or representative without first notifying the OAH.

If you are going to retain an attorney or representative, do so as soon as you know there will be a hearing scheduled. Your attorney or representative will need time to prepare your case and schedule a hearing.

If you retain an attorney or other representative, let the OAH office on your notice know immediately. Be prepared to provide us with the name, address and telephone number of your representative.

WHAT IF I DON'T PARTICIPATE IN THE HEARING?

If you are the party who requested a hearing and then fail to participate in the hearing, your case will be dismissed. The Employment Security Department decision you appealed will remain in force.

If you did not ask for the hearing, but you are one of the parties listed on the **Notice of Hearing**, the hearing will be held even if you do not participate. However, if you wish your point of view to be considered, the hearing is the only chance parties have to present all their evidence.

The ALJ will hear those present and make a decision based upon the available evidence. The ALJ may decide that the evidence in the file is not as persuasive as sworn testimony provided at the hearing.

WHAT IF I CHANGE MY MIND ABOUT WANTING A HEARING?

If you ask for a hearing, and then decide you don't want to pursue it, you can withdraw your appeal. If you decide to withdraw your appeal, please contact the OAH office on your **Notice of Hearing** as soon as possible.

A withdrawal of your request for a hearing typically means that you may not again appeal the decision by the Employment Security Department.

CAN I GET A NEW DATE FOR A HEARING?

If you cannot attend the hearing as scheduled, you may request a postponement. The OAH may grant a postponement if the request is made promptly and if there is good cause to grant the request.

If you need a postponement, telephone the OAH office on your **Notice of Hearing** immediately. The OAH will allow or deny your request.

WHEN WILL I GET A DECISION?

In most cases, a decision will be mailed to you within two weeks. The decision is written in English. It will give the facts of the case as determined by the ALJ and explain the result.

WHAT TIPS CAN HELP ME IN THE HEARING?

- Before the hearing, write down the points you want to cover at the hearing. Write down questions that you want to ask witnesses. Be prepared to present the details about specific incidents. Be prepared to answer the questions: who, what, where and when.
- Use the list to prepare your case, and use it at the hearing to make sure that you cover everything.
- **IMPORTANT:** If you have written evidence you want to use in the hearing, you must provide it to the ALJ (**not your local Work Source Center**) and the

other parties involved in the hearing before the time set for the hearing.

- Decide if you need witnesses. Talk to your witnesses as soon as possible to be sure they will be available to testify and that their testimony will add to your case.
- If your case is complicated, you may want a representative or a lawyer. If you want to be represented, take steps to retain one immediately upon learning that a hearing will be scheduled.
- Testify only when it is your turn. Do not interrupt. You will be provided an opportunity to speak and ask questions.
- Testify to what you know--don't guess. If you don't know the answer to a question, say that you don't know.
- Don't repeat what has already been said.
- Make your questions short and to the point. Ask only one question at a time.
- Present only evidence that is necessary to your case.
- Don't argue or get angry during the hearing. You will do a much better job of presenting your case if you stay calm.
- If you are not sure what to do during the hearing, ask the ALJ.

WHERE DO I CALL IF I HAVE QUESTIONS?

If you have questions which remain unanswered after you have read this pamphlet, call the telephone number of the OAH office on your **Notice of Hearing**.

WHAT IF I WANT MORE HEARINGS INFORMATION?

Visit our website at **www.oah.wa.gov**.

WHAT IF I DISAGREE WITH THE HEARING DECISION?

If a hearing decision goes against you, you have the right to appeal by filing a **Petition for Review** with the Commissioner of the Employment Security Department. The ALJ's decision, the hearing tape and exhibits are reviewed by the Commissioner's Review Office.

You have 30 days to file a **Petition for Review** after the date the hearing decision is mailed to you. The instructions for filing the petition are set forth in the ALJ's decision, under the section entitled "NOTICE OF FURTHER APPEAL RIGHTS".

The **Petition for Review** must be in writing. It must be postmarked and mailed to Agency Records Center, PO Box 9046, MS-6000, Olympia, WA 98507-9046, and must include your docket number.

All argument in support of the **Petition for Review** must be attached to and submitted with the petition, and **may not exceed five pages**. A **Petition for Review** need not be filed on an official form, but a form may be obtained from your unemployment claims TeleCenter.

If you missed your hearing or are filing your petition after the 30-day appeal period, explain why. Keep in mind that failing to file on time could mean your case will not be reviewed.

If you file a **Petition for Review**, the other party will receive a copy of the petition and may reply.

Special claimant instructions: If you are a claimant and you are not working full-time, file your weekly claims on your regular schedule. If you do not submit claims on time while waiting for your appeal hearing, the ALJ's decision or the Commissioner's decision on a Petition for Review, you may be denied payment for weeks claimed late.

WHAT DOES THE COMMISSIONER'S REVIEW OFFICE DO?

The Commissioner's Review Office does not hold new hearings. It reviews only the evidence presented at

hearings conducted by the ALJ. The evidence consists of tape recorded testimony given at the hearing and any written or physical evidence presented at the hearing.

The Commissioner's Review Office will also consider any written arguments you may want to present. Written argument is not required, but if you choose to submit argument, you must send it in with your **Petition for Review**.

Your argument may not exceed five pages. This requirement is strictly enforced, and the Commissioner's Review Office will return any pages over five.

After reviewing the case, the Commissioner's Review Office will issue a decision to affirm, set aside, or modify the hearing decision. It may also send your case back to the ALJ if there is insufficient evidence to make a decision.

REQUEST FOR INTERPRETER

My name is:

My Social Security Number is:

_____/_____/_____

I need an interpreter.

- The language I speak best is:

- I am hearing impaired

(Check if you are hearing impaired): ☐

My hearing is scheduled for:

_____ at: _____
(date) (time)

with:

(Name of Administrative Law Judge)

Please return this completed form to the appropriate OAH office. The address is listed on your Notice of Hearing.

**OFFICE OF ADMINISTRATIVE HEARINGS
NOTICE OF NONDISCRIMINATION
AND EQUAL ACCESS POLICY**

This notice is provided in accordance with the Title II of the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

The Washington State Office of Administrative Hearings does not discriminate against any person in employment or in access to its facilities or services on the basis of disability, race, color, national origin, creed, sex, age, marital status or ability to speak English.

If you have a disability and desire accommodation by the Office of Administrative Hearings when using its facilities or services, please notify an employee of the Office of Administrative Hearings field office concerned.

Persons alleging unequal treatment or denial of equal access and persons desiring additional information about accommodation should contact:

**Office of Administrative Hearings
Attn: Americans with Disabilities
Act Coordinator**

**PO Box 42488
Olympia, WA 98504-2488
(360) 664-8717**

**TTY (hearing impaired) users dial through
Washington relay operator 1-800-833-6388**

